

ID:02040answer

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

EDDIE F. MARSHALL

CASE NO. C-1-02-189

SANDRA D. MARSHALL

Judge Herman Weber

VENA MARSHALL

Magistrate Judge Hogan

Plaintiffs

vs.

OHIO DEPARTMENT OF EDUCATION

NEW BOSTON PUBLIC SCHOOLS

LOWELL HOWARD

BERNARD TILLEY

MELINDA BURNSIDE

JERRY BENTLEY

LAURA WESSEL

PAT POTTER

Defendants

**ANSWER OF DEFENDANTS NEW  
BOSTON PUBLIC SCHOOLS,  
LOWELL HOWARD, BERNARD  
TILLEY, MELINDA BURNSIDE,  
JERRY BENTLEY, LAURA WESSEL  
AND PAT POTTER**

Now come defendants Board of Education of New Boston Public Schools, incorrectly designated in the Complaint as New Boston Public Schools, Lowell Howard, Bernard Tilley, Melinda Burnside, Jerry Bentley, Laura Wessel and Pat Potter (hereinafter referred to collectively as “New Boston Schools”), and for their answer to plaintiffs’ Complaint and pursuant to this Court’s Order of April 13, 2005, submit this answer to the Complaint and

Amended Complaint and Correction plaintiffs filed respectively on March 19, 2002 and December 11, 2002.

This answer will address the allegations in the original Complaint first and then in the pleading improperly denominated as Amended Complaint and Correction which is in reality a supplemental complaint which incorporates the original Complaint's allegations.

1. Paragraph 1 of plaintiffs' Complaint contains no allegations to which the New Boston Schools need respond.

2. New Boston Schools denies the allegations of Paragraph 2 of plaintiffs' Complaint for want of knowledge.

3. New Boston Schools denies the allegations of Paragraph 3 of plaintiffs' Complaint.

4. New Boston Schools denies the allegations of Paragraph 4 of plaintiffs' Complaint.

5. New Boston Schools denies the allegations of Paragraph 5 of plaintiffs' Complaint.

6. New Boston Schools denies the allegations of Paragraph 6 of plaintiffs' Complaint.

7. New Boston Schools denies the allegations of Paragraph 7 of plaintiffs' Complaint for want of knowledge.

8. New Boston Schools denies the allegations of Paragraph 8 of plaintiffs' Complaint.

9. New Boston Schools denies the allegations of Paragraph 9 of plaintiffs'

Complaint.

10. New Boston Schools denies the allegations of Paragraph 10 of plaintiffs'

Complaint.

11. New Boston Schools denies the allegations of Paragraph 11 of plaintiffs'

Complaint.

12. With respect to the allegations in the "Amended Complaint and Correction", New Boston Schools denies all of the allegations in the Amended Complaint and Correction.

13. New Boston Schools denies each and every allegation in plaintiffs' Complaint and Amended Complaint and Correction not specifically admitted herein.

**FIRST AFFIRMATIVE DEFENSE**

Plaintiffs' Complaint and Amended Complaint and Correction fail to state a claim upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

Plaintiffs have failed to mitigate their damages.

**THIRD AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred by the applicable statutes of limitations.

**FOURTH AFFIRMATIVE DEFENSE**

Plaintiffs have failed to exhaust their administrative prerequisites to suit.

**FIFTH AFFIRMATIVE DEFENSE**

This Court lacks jurisdiction over the subject matter of plaintiffs' Complaint and Amended Complaint and Correction.

**SIXTH AFFIRMATIVE DEFENSE**

All decisions and actions of New Boston Schools concerning plaintiffs were taken for legitimate, non-discriminatory reasons unrelated to plaintiffs' disability or other protected status.

**SEVENTH AFFIRMATIVE DEFENSE**

Defendants are entitled to qualified immunity.

**EIGHTH AFFIRMATIVE DEFENSE**

Plaintiffs have failed to comply with the IDEA.

**NINTH AFFIRMATIVE DEFENSE**

Plaintiffs Sandra Marshall and Eddie Marshall are not the real parties in interest.

**TENTH AFFIRMATIVE DEFENSE**

Plaintiffs' Complaint and Amended Complaint and Correction do not comply with Rules 8 and 10 of the Federal Rules of Civil Procedure.

WHEREFORE, defendants demand that plaintiffs' Complaint and Amended Complaint and Correction be dismissed at plaintiffs' costs and that defendants recover their attorneys' fees pursuant to 42 U.S.C. §1988.

/s/ R. Gary Winters  
R. Gary Winters 0018680  
Bernard W. Wharton 0063487  
Attorneys for Defendants  
McCASLIN, IMBUS & McCASLIN  
Suite 900 Provident Bank Building  
632 Vine Street  
Cincinnati, OH 45202-2442  
(513) 421-4646 Telephone  
(513) 421-7929 Facsimile  
[rgwinters@mimlaw.com](mailto:rgwinters@mimlaw.com)  
[bwwharton@mimlaw.com](mailto:bwwharton@mimlaw.com)

**CERTIFICATE OF SERVICE**

I hereby certify that on the 22<sup>nd</sup> day of April, 2005 , a copy of the foregoing document was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

s/ R. Gary Winters  
R. Gary Winters 0018680  
Bernard W. Wharton 0063487  
McCASLIN, IMBUS & McCASLIN  
Attorneys for Defendants  
Suite 900 Provident Building  
632 Vine Street  
Cincinnati, OH 45202-2442  
(513) 421-4646 Telephone  
(513) 421-7929 Facsimile  
[rgwinters@mimlaw.com](mailto:rgwinters@mimlaw.com)  
[bwwharton@mimlaw.com](mailto:bwwharton@mimlaw.com)